

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BRITTANY GORDON,
INDIVIDUALLY AND AS NEXT
FRIEND OF A.B., A MINOR,

Plaintiff,

V.

EMERALD WOOD KINDERCARE
LEARNING CENTER; KINDERCARE
LEARNING CENTERS, LLC; and
KINDERCARE EDUCATION, LLC,

Defendants.

[illegible]

CASE NO. 1:21-cv-945

DEFENDANTS' JOINT NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants KinderCare Learning Centers LLC (“KCLC”) and KinderCare Education LLC (“KCE”) file this Joint Notice of Removal. In support, Defendants respectfully offer this Court the following facts, arguments, and legal authorities:

COMPLIANCE WITH 28 U.S.C. § 1446(a)

1. Pursuant to 28 U.S.C. § 1446(a), Defendants include the following index of matters being filed with this first amended notice:

Exhibit 1: The state court docket sheet¹

Exhibit 2: Plaintiff's Original Petition (9/9/21)

¹ At the time of filing of this Notice of Removal, the state court electronic docket has not been updated to reflect the filings attached to this Notice as Exhibits 8 and 9.

- Exhibit 3:** Agreement to Accept Service (9/13/21)
- Exhibit 4:** Citation: Emerald Wood KinderCare Learning Center (issued 9/14/21)
- Exhibit 5:** Plaintiff's First Amended Petition (9/16/21)
- Exhibit 6:** Plaintiff's Second Amended Petition (9/16/21) ("Petition")
- Exhibit 7:** Letter Confirming Service of Plaintiff's Second Amended Petition (9/20/21)
- Exhibit 8:** Plaintiff's Notice of Nonsuit of Emerald Wood KinderCare Learning Center (10/15/21)
- Exhibit 9:** KCLC's and KCE's Original Answer to Plaintiff's Petition (10/18/21)

PARTIES

1. Plaintiff is a Texas citizen, and no properly joined defendant is a Texas citizen. Complete diversity of citizenship has existed from the time Plaintiff filed the underlying state court action on September 9, 2021 until now.

A. Plaintiff

2. Plaintiff Brittany Gordon was and is a resident of Austin, Travis County, Texas. Ex. 6, Petition ¶ 2. Plaintiff's residence allegation is *prima facie* evidence of Texas citizenship for diversity purposes. *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 793, 797 (5th Cir. 2007) ("In determining diversity jurisdiction, the state where someone establishes his domicile serves a dual function as his state of citizenship."); *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011) ("Evidence of a person's place of residence . . . is prima face proof of his domicile.").

B. Defendants

3. Defendant KinderCare Learning Centers LLC (“KCLC”) is a Delaware limited liability company. Its sole member is KU Education LLC (“KUE”), a Delaware limited liability company. KUE’s sole member is Defendant KinderCare Education LLC (“KCE”), a Delaware limited liability company. KCE’s sole member is Knowledge Schools LLC (“KS”), a Delaware limited liability company. KS’s sole member is KinderCare Education Holdings LLC (“KCEH”), a Delaware limited liability company. KCEH’s sole member is KUEHG Corp., a Delaware corporation with its principal place of business in Oregon. Defendant KCLC is, therefore, a citizen of Delaware and Oregon. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008); 28 U.S.C. § 1332(c)(1).

4. As discussed in the preceding paragraph, Defendant KCE is a citizen of Delaware and Oregon. *Harvey*, 542 F.3d at 1080; 28 U.S.C. § 1332(c)(1).

STATE COURT ACTION

5. Defendants remove the state court action styled *Brittany Gordon, individually and as next friend of A.B., a minor v. Emerald Wood KinderCare Learning Center, et al.*; Cause No. C-1-CV-21-004243; In the County Court at Law No. 1 of Travis County, Texas. In this lawsuit, Plaintiff alleges damages arising out of personal injuries at a day care facility operated by KCLC and KCE. Ex. 6, Petition ¶ 8. Plaintiff also sued Emerald Wood KinderCare Learning Center (an improper entity), but since dismissed it. Ex. 8, Notice of Nonsuit.

6. Against Defendants, Plaintiff alleges negligence claims. *Id.* ¶ 10. Plaintiff seeks damages for medical expenses, physical pain and mental anguish, physical impairment, disfigurement, and lost wages allegedly incurred by Brittany Gordon. *Id.* ¶¶ 10(a)-(e).

REMOVAL PURSUANT TO DIVERSITY OF CITIZENSHIP

7. Defendants remove this action pursuant to 28 U.S.C. § 1441(a). This Court has jurisdiction based on 28 U.S.C. § 1332(a)(1) and (a)(2) in that “the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—(1) citizens of different States”

A. Amount in Controversy

8. “Plaintiff seeks monetary relief of more than \$100,000 but less than \$250,000.” Ex. 6, Petition ¶ 6.

B. Diversity of Citizenship

9. Plaintiff is a citizen of Texas. No defendant is a Texas citizen. KCLC is a Delaware limited liability company whose members are all Delaware and/or Oregon citizens. KCE is also a Delaware limited liability company whose members are all Delaware and/or Oregon citizens. Given the complete diversity of citizenship, this Court has jurisdiction under 28 U.S.C. § 1332(a)(1) and (a)(2), and removal is proper under 28 U.S.C. § 1441(a).

PROCEDURAL REQUIREMENTS OF REMOVAL

A. Timeliness

10. This Notice of Removal has been timely filed because thirty days have not elapsed since counsel for Defendants accepted service of the lawsuit on September 20, 2021. Exs. 3 & 7. *Cf.* 28 U.S.C. § 1446(b)(1).

B. Venue

11. Plaintiff brought this action in the County Court at Law No. 1 of Travis County, Texas—located within the Western District of Texas, Austin Division. 28 U.S.C. § 124(d)(1). Accordingly, venue is proper in this Court because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

C. Compliance with Notice Requirements

12. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly give written notice of the filing of this Notice to Plaintiff, and will promptly file a copy of the Notice of Removal with the clerk for the County Court at Law No. 1 of Travis County, Texas.

D. Filing Fee

13. A filing fee of \$402 was tendered to the Clerk of the United States District Court for the Western District of Texas, Austin Division.

E. Other Filings

14. Pursuant to Federal Rule of Civil Procedure 7.1, Defendants will file corporate disclosure statements separately.

F. Jury Demand

15. The parties previously demanded a jury trial in state court. Ex. 6, Petition ¶ 13; Ex. 9, KCLC's & KCE's Answer ¶ 19. *Cf.* Fed. R. Civ. P. 81(c)(3)(A).

G. Request for Leave to Amend

16. In the event this Court subsequently identifies a defect in this Notice of Removal, Defendants respectfully request the Court grant Defendants leave to amend this Notice and cure the defect. *See, e.g., Silva v. Degs Wind I, LLC*, No. CV 1:13-247, 2015 WL 12743775, at *2-3 (S.D. Tex. Jan. 29, 2015); *Bailon v. Landstar Ranger, Inc.*, 3:16-CV-1022-L, 2016 WL 6565950, at *4 (N.D. Tex. Nov. 3, 2016) (citing *In re Allstate Ins. Co.*, 8 F.3d 219, 221 & n.4 (5th Cir. 1993)) (procedural defects may be cured by the filing of an amended notice of removal); *Lafayette City-Parish Consol. Government v. Chain Elec. Co.*, No. 11-1247, 2011 WL 4499589, at *7 (W.D. La. Sept. 23, 2011) (explaining "defendants may freely amend the notice of removal required by section 1446(b).").

CONCLUSION

Based on the foregoing, Defendants remove this case to this Court. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required under 28 U.S.C. § 1446(a).

Respectfully submitted and signed pursuant to
Federal Rule of Civil Procedure 11,

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CERTIFICATE OF SERVICE

On the 19th day of October, 2021, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the following counsel of record electronically and/or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

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